THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition Nos.14743 & 14750 of 2007
(Common Judgment)

% 26.07.2007

Between:

N. Raja Reddy and others

…Petitioners

And

The Sub-Registrar, Srikalahasti,
Chittoor District, and others.

…Respondents

! COUNSEL FOR PETITIONERS: Sri O. Manohar Reddy,

^ COUNSEL FOR RESPONDENTS: G.P for Revenue

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> Head Note:

? CITATIONS:

1) 1990(1) ALT 290
2) 2004 (1) ALD 284 (2)

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THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

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COMMON JUDGMENT:

The question that arises for consideration in these two writ petitions is: whether the prohibition contained under Section 5 of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (for short '*the Act*'), applies to the lands, which were brought to sale by a Co-operative Society, mentioned in Section 6 of the Act, for the redemption of mortgage, made in its favour.

Some of the villagers of Pagali, of Earpedu Mandal, and Udamalapadu, of Srikalahasthi Mandal, were assigned Government lands in various survey numbers. Few of them have raised loans from primary agricultural cooperative societies of the area, affiliated to District Cooperative Central Bank Limited, Chittoor.

As a security for repayment, they mortgaged the lands, assigned to them. Since the loans remained unpaid, recovery certificates were obtained from the competent authority under Section 71 of the A.P. Cooperative Societies Act (for short 'the APCS Act') by the creditor society. Thereafter, the properties were put to sale. The petitioners have purchased the lands, that were brought to sale. The particulars are as under:

WP No.	Name of the Assignee	Sy.No. & Village	Extent	Date of Sale certificate	Date of confirmation of sale
14743/ 2007 1st petitioner	N. Polaiah	166/1, Pagali Vill., Earpedu Mandal	Ac.4.89 cents	5-6-2000	24-2-2006

14743/ 2007 1st petitioner	S.Venkataiah	164/2 & 167/3 Pagali Vill., Earpedu Mandal	Ac.4.43 cents	5-6-2000	24-2-2006
14743/ 2007 2nd petitioner	S.Ramalaksh-mamma	165/2 Pagali Vill., Earpedu Mandal	Ac.4.99 cents	10-2-2006	14-7-2006
14743/ 2007 3rd petitioner	N.Mathaiah	166/2 & 167/1 Pagali Vill., Earpedu Mandal	Ac.4.68 cents	5-6-2000	24-2-2006
14743/ 2007 3rd petitioner	N. Bathaiah	167/2 Pagali Vill., Earpedu Mandal	Ac.4.58 cents	10-2-2002	24-2-2006
14750/ 2007 3rd petitioner	K.Bheemaiah	137/2-3/IP Udamalapadu	Ac.6.63 cents	10-2-2006	14-7-2006

After the sales in favour of the petitioners became final, their names were mutated in the revenue records, and they were issued pattadar passbooks.

Petitioners intended to sell their properties in favour of third parties. For this purpose, they approached the 1st respondent, Sub-Registrar, Srikalahasti. They claim to have presented the sale deeds before the 1st respondent, for registration. It is stated that, on the information furnished by the respective Tahsildars of the Mandals, the 1st respondent is not entertaining the documents by treating the property, as assigned land.

Sri O. Manohar Reddy, learned counsel for the petitioners submits that, though the lands purchased by the petitioners were, at

one point of time; assigned to various beneficiaries, they came to be sold by the Cooperative Central Bank, on behalf of the Primary Agricultural Cooperative Societies, affiliated to it, for recovery of loans, raised by the assignees, on the basis of mortgages.

He contends that the prohibition contained under Sections 3 and 5 of the Act, does not apply to transactions to an assignee, and financial institutions, owned by the State, such as a Primary Agricultural Cooperative Society, as mentioned in Section 6 of the Act.

Learned Government Pleader for Revenue, took instructions at the stage of admission, and made extensive submissions.

He contends that an assigned land always retains its character, and the prohibition brought about by the Act continues to operate. It is urged that an otherwise invalid sale cannot change the character of the lands, nor can bring about new legal regime. He places reliance upon the judgments of this Court in ***B.Ramaiah, v. Mandal Revenue Officer, Puttaparthi***[1] and ***Harijana Bazarappa v. Chakarala Ranganna***[2].

The Act prohibits alienation of assigned lands. While Section 3 renders all categories of transfers of assigned land, as *void ab initio*, Section 5 prohibits the registration of any document, evidencing such transfers. Any sale or transfer, in contravention of the provisions of the Act, cannot change the character of land, and the objection can be raised at any point of time. Successive transactions, which are otherwise prohibited, do not bring about any change as to the legal implications.

The Legislature, however, carved out an exception as regards the prohibition imposed under Sections 3 and 5 of the Act. Section 6 reads as under:

"**Sec.6**: Nothing in this Act shall apply to the assigned lands

> held on mortgage by the State or Central government, any local authority, a co-operative society, a scheduled bank or such other financial institution owned, controlled or managed by a State Government or the Central Government, as may be notified by the Government in this behalf".

From a reading of this provision, it is evident that if the transfer by way of mortgage is in favour of a State or Central Government, any local authority, a Co-operative Society, or a Scheduled Bank, or any financial institution, controlled or managed by State or Central Governments, the provisions of the Act do not apply.

The record discloses that the lands assigned in favour of various beneficiaries, referred to in the table, were mortgaged in favour of primary agricultural cooperative societies, as security for repayment of loans. In view of the default committed by the borrowers, steps were taken to foreclose the mortgages. Sale certificates under Section 71 of the A.P.C.S. Act were obtained and further steps were taken. In the ultimate analysis, the petitioners emerged as the successful bidders and the competent authority affirmed the sales, in favour of the petitioners. Revenue records are also mutated, correspondingly.

In ***B. Ramaiah's*** case (*1 supra*), the land assigned to a beneficiary was mortgaged in favour of an Agricultural Development Bank. Even while the mortgage was subsisting, the assignee sold the land to third parties. When steps were initiated under the Act, transferee claimed exemption under Section 6 of the Act. Extensive discussion was undertaken, and the provisions of the Act were analyzed. The Division Bench of this Court held that, mere existence of mortgage does not enable the assignee, to sell the land to third parties. It was pointed out that the benefit under Section 6 of the Act enures to the Cooperative Society, in whose favour, the land was mortgaged.

The facts of the present case are different. The petitioners are transferees from the Society, in whose favour the lands were mortgaged. Once the mortgage in favour of the cooperative society is exempted, the other consequential steps taken for, foreclosure of the same, would also stand exempted. The net result is that, if an assigned land comes to be sold, in pursuance of a mortgage, which is exempted under Section 6, it looses the characteristics of assigned land, and the exemption continues to be available to the purchasers from the society or financial institutions, as the case may be.

The ratio in ***Harijana Bazarappa's*** case (*2 supra*) has no application to the facts of this case. The prohibition contained in Section 3 of the Act, was reiterated and the exemption under Section 6 of the Act was, neither claimed, nor was dealt with.

For the foregoing reasons, the writ petitions are allowed, and it is directed that the properties purchased by the petitioners, in the sales conducted by the District Co-operative Central Bank Ltd., Chittoor, shall not be treated as assigned lands, and the documents presented for transfer, shall be entertained by the 1st respondent, and processed, in accordance with law.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.26-07-2007.

Note:
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[1] 1990 (1) ALT 290

[2] 2004 (1) ALD 284 (2)